

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Larry D. & Sharon K. Susie,

Petitioners-Appellants,

v.

Sioux City Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-107-0700
Parcel No. 8947-17-380-014**

On March 26, 2010, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants, Larry D. and Sharon K. Susie, were self-represented and submitted evidence in support of their petition. The Sioux City Board of Review designated Attorney Jack Faith as its legal representative. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Larry and Sharon Susie are the owners of a residentially classified property located at 2909 Myrtle Street, Sioux City, Iowa. The property consists of a 7500 square-foot site improved with a one-story home built in 1941, containing 1063 total square feet of living area, and a full basement with 225 square feet of low quality finish. Additional features include a one-car detached garage, as well as a small enclosed front stoop. The property has a January 1, 2009, assessment of \$77,600, representing \$9,900 in land value and \$67,700 in improvement value.

The Susies protested to the Sioux City Board of Review regarding the 2009 assessment for their parcel. The protest was based on the following grounds: 1) The assessment is not equitable under Iowa Code section 441.37(1)(a); 2) The property is assessed for more than the value authorized by law

under Iowa Code section 441.37(1)(b); 3) There is an error in the assessment under section 441.37(1)(d); and 4) There has been a downward change in the value since the last assessment under sections 441.37(1) and 441.35(3). The Board of Review denied the protest.

The Susies then appealed to this Board, asserting a single ground that there has been a downward change. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

In their petition to the Board of Review, it is unclear what, if any, evidence was presented beyond oral testimony and the petition form itself. On the petition form to the Board of Review, the Susies identify five properties by parcel number, address and assessed value, which they consider as equity comparables. They also claim that the actual value of the subject property is \$63,600. Because the Susies have only a claim of over-assessment before this Board, the equity comparables offered at the Board of Review are not considered relevant.

To this Board, the Susies submitted a letter dated June 15, 2009, written by a neighbor, Nancy Brommer. In this letter, Ms. Brommer outlines concerns about the subject neighborhood and specifically one property located at 2915 Myrtle, which is a rental property in disrepair. The Susies also included interior and exterior photos of this neighboring property, demonstrating its condition. It appears that Ms. Brommer is asserting that the neighborhood values are impacted, specifically due to the general lack of upkeep on this particular property, but also due to the actions of the tenant occupants. However, there is no documentation of this assertion that values have indeed been impacted.

Ms. Susie offered testimony relating to her own property which is the subject of this appeal. Ms. Susie indicates while they have completed basic, necessary maintenance over the years, there has

been no major improvement to the property since they purchased it in 1972. Ms. Susie indicated they have spent roughly \$9000 for replacement of the driveway. But they have since had significant problems with the new drive, including some damage to the siding and foundation of their home. It is unclear what the full extent of the foundation issues are, or how it may impact market value as of the effective date of this appeal, January 1, 2009.

The Sioux City Board of Review offered five properties they considered as equity comparables; and five properties they considered as market comparables. The Susies have only the claim of greater than market value before this Board.

Ms. Susie testified in regards to the properties submitted by the Board of Review. But she offered only anecdotal evidence in regards to their comparability. No compelling evidence or testimony was presented which would discredit the properties selected by the Board of Review as market comparables.

The subject property has an assessed value per square foot of \$73. The five properties offered by the Board of Review as comparable are all located within six blocks of the subject. According to Nan Owings, an appraiser with the Sioux City Assessor's office, the five properties were selected based upon style, size and location. Four of the five properties sold in 2008, prior to the January 1, 2009, assessment and one property has a sale date of March 2009. Taking out the one property that sold after the effective date of valuation, the pre-adjusted price range per square foot is \$72.83 to \$87.88, with an average of \$79.75. Additionally, the pre-adjusted sales prices range from \$76,000 to \$96,500 with an average of \$84,875. The subject property has a per-square-foot assessed value of \$73.00, and its current assessed value is \$77,600. Both of these values are at the lower end of the ranges presented by the Board of Review and less than the average of those ranges.

Ms. Susie also indicated they had a professional appraisal completed for mortgage refinancing purposes. Susie testified the appraisal was completed by Monte Gregg, a certified appraiser, as of

August 6, 2009, and indicated a value of \$69,000. The appraisal was not offered as evidence, and therefore not available for review by this Board. We give little consideration to this appraisal as it was not presented for consideration and the effective date of the appraisal is eight months after the January 1, 2009, assessment date which is the focus of this appeal.

Additionally, Ms. Susie indicated that she had a written offer from Alan Jordan, the Sioux City Assessor, to lower the assessment value by \$3000, to a total valuation of \$74,600. This Board requested a copy of that offer at the time of hearing. On April 9, 2009, we received a short note from the Susies identifying papers they claim were received from the City Assessor's office on April 14, 2009. Following the note were four pages of "public sales report with photos" containing twenty-six properties. Each property has a photo, parcel number and basic information including the deed holder, address, map area, sales price and date, as well as improvement information including grade, living area, year built and assessed value. There are handwritten notations on every page but it is unknown who is the author, or authors, of the notations. In their note, the Susies identify the notations in the top right corner as the assessor's handwriting offering a lesser amount on both properties.

The notes in the upper right corner are as follows:

2909	1063 square feet	69.90	\$74,300
2905	850 square feet	80.24	\$68,200

Based upon these brief notations, it is asserted the subject property located at 2909 Myrtle Avenue, appears to have a value of \$74,300 "offered" in lieu its current assessed value of \$77,600. No explanation is provided as to how these figures were reached. And there are no notations which would indicate this is indeed either an offer to stipulate, or an indication that this is the correct value of the property.

Ms. Owings indicated that she was unaware of any such specific offer to the Susie's; however, stated informal hearings do occur to adjust for listing errors if a determination is made that a reason to

adjust exists. Owings testified that these informal hearings can occur up to the date which the Board of Review begins, on May 5th. It is clear that any informal conversations between the Susies and the assessor's office reasonably took place prior to April 15, 2009. This is based both upon the oral testimony provided and demonstrated by the time stamp on the documentation supplied being dated April 14, 2009. However, Ms. Owings testified that many such informal hearings and offers to settle or stipulate occur right up to the Board of Review hearings which begin on May 5 of the calendar year. We have concerns that this is typical and on-going. After April 15 of a calendar year, assessors have no authority to change values. Iowa Code § 441.23. After April 15 of a calendar year, assessors can only direct property owners to the Board of Review. *Id.*; *see also* § 441.37A.

There is no evidence that the alleged offer by the City to lower the assessed value of the property located at 2909 Myrtle was believed to represent actual value. The Board of Review argues an offer to compromise does not equal admittance that an assessment is wrong. We agree.

There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of demonstrating the assessment is incorrect. § 441.21(3) In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive *and* the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The burden is on the taxpayer to prove the correct value of the property.

While the Susies testified to an appraisal dated August 2009 which they argue indicates the subject assessment may be excessive, this evidence was not submitted for review and is well after the assessment date of value. The Susies offered no evidence to support what they assert to be the correct value of their property. Based upon the foregoing, the Appeal Board finds there is insufficient evidence to support the claim that the subject property is assessed at greater than market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). The appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).


In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

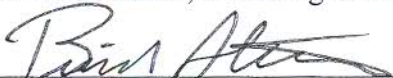
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Susie's did not provide this Board with persuasive evidence that the current assessed valuation is more than authorized by law; and they also failed to provide substantial evidence of its fair market value.

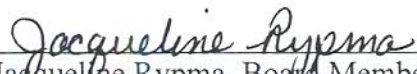
In the opinion of the Appeal Board, the evidence does not support the claims brought before this Board. We, therefore, affirm the assessment of the subject property located at 2909 Myrtle Street, Sioux City, Iowa, as determined by the Sioux City Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of Larry D. and Sharon K. Susie's property, located at 2909 Myrtle Street, Sioux City, Iowa, as of January 1, 2009, set by the Sioux City Board of Review, is affirmed.

Dated this 5 day of May, 2010


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-3</u> 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	 

